Supreme Court, U.S.
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IN THE

Supreme Court of the United States

No. 68-5009

DONALD FELIX SCHNEBLE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

BRIEF FOR PETITIONER

PETITION FOR CERTIORARI FILED MARCH 13, 1969
CERTIORARI GRANTED JUNE 28, 1971

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JURISDICTIONAL STATEMENT

This cause is before the Court on the petition of Donald Felix Schneble to review the verdict of the Circuit Court of Walton County, Florida, and the judgment rendered thereon. Said verdict being entered on November 19, 1965, and the judgment entered on December 30, 1965. The verdict and judgment was appealed to the Florida Supreme Court on July 27, 1967, and a five to two decision affirmed the trial court judgment. The petitioner then field his motion

for a re-hearing which was subsequently denied on September 19, 1967. Petitioner as the co-defendant took a joint appeal for writ of certiorari in the United Supreme Court, said petition having been granted on June 10, 1968, and the cause was reversed and remanded to the Florida Supreme Court and further proceedings in light of *Bruton v. U.S.*, 391 U.S. 123 (1968). The Florida Supreme Court subsequently entered its decision on that opinion on November 13, 1968, in which the defendant, Snell was granted a new trial under law of the *Bruton* decision, and the petitioner's conviction was again affirmed by the Florida Court. From that decision petitioner filed a motion for a re-hearing in the Florida Supreme Court which was subsequently denied on March 13, 1969, the petitioner filed his petition for writ of certiorari in the United States Supreme Court which writ was granted June 29, 1971, allowing the cause to again come before the United States Supreme Court on the question of whether or not petitioner's conviction was in violation of the law as laid down in *Bruton v. United States*, 391 U.S. 123.

This cause is before the Court in accordance with jurisdiction conferred upon this Court by 28 U.S.C.A. Section 1257. The appeal is timely filed in accordance with the prevailing statutory and rules of the United States Supreme Court.

The question which the petitioner is requesting the United States Supreme Court to review his conviction and judgment is whether or not the trial court erred in allowing the joint trial of the defendant, Schneble and a co-defendant, Snell, allowing the statements of each to be used against the other.

STATEMENT OF THE CASE AND FACTS

Petitioner was the defendant below. Petitioner will be referred to as "petitioner" and the Appellee as "The State." In this brief the Record on Appeal will be symbolized by "R" and the Transcript of Jury Trial as "T."

The Petitioner was apprehended on July 14, 1965, at approximately 11:55 P.M., after having been stopped by Highway Patrol Trooper William J. Maddox. Upon ascertaining that the driver of the automobile, the co-defendant Snell, did not have a driver's license Trooper Maddox arrested Snell on the charge of no driver's license. Trooper Maddox also arrested the petitioner Schneble, for vagrancy. The Trooper stopped the car because of the right tail light not being lit. After he had both defendants in his patrol car he went to the car in which the defendants were traveling, in order to move the car off the road, and stated at that time he noticed "a bulge under a raincoat draped across the right front seat. He examined it and found it was a pistol, a .380 Llama pistol. The Trooper further testified that he asked the petitioner Schneble if he had a pistol and upon ascertaining that he did the Trooper said, "let's get it," and then ordered the petitioner to, "open your bag and get it out." (T-64) The defendants were then taken to a highway patrol station and interrogated until about 5 A.M. the following morning, after which time they were taken and confined in the Palm Beach County Jail where they were charged as above indicated.

Later that same day they were taken before Judge Hugh McMillian of the Criminal Court of Record where the petitioners entered pleas of guilty to no driver's license and vagrancy respectively. The petitioner, Schneble, entered a plea of guilty and was given credit for the time he had already served. (T-412 and 413) During the day of July 15th after blood stains were found in the car, and after Maxine Romona Collier, the alleged victim, was determined to be missing, arrangements were made by Detective Lt. Larry Yates of the Palm Beach County Sheriff's Office, to have the petitioner, Schneble's sentence set aside and a 15-day sentence at hard labor imposed. (T-186, 187 and 188) It is noted that all of this was done during the afternoon of July 16, 1965, after the petitioner, Schneble's sentence had expired at 5:00 A.M. earlier that same day.

At the time the petitioner, Schneble, was taken to Court in chains for the re-sentencing he requested the aid of an Attorney (T-193 and 194). This was corroborated by the Assistant Public Defender Gross, in his deposition (defendant's exhibit No. 2). The petitioner, Schneble, further testified that on Friday morning, July 17, 1965, he again requested an attorney, but was not given one. (T-193 and 195).

Those officers who questioned Schneble and were present in Court as witnesses for the State were extremely vague as to the amount of time Schneble was questioned. (T-185, 188 and 189). (T-242, 247 and 148). The petitioner, Schneble's memory was more exact in that he remembered being questioned night and day from the time he was picked up until several days and nights later, with the exception of Thursday and Friday night when he got to sleep in his cell. (T-191 and 192) (T-193, 194, 195, etc.). The testimony of both Detective Sgts. Haley and Herron and petitioner, Schneble, was to the effect he underwent a great deal of harrassment, fear and intimidation during the period he was being questioned. (T-125, etc.) (T-190, etc.) (T-230, etc.) (T-257, etc.) and (T-307, etc.)

At no time during the time the petitioner remained in Palm Beach County Jail were they taken before a Committing Magistrate on a charge of unlawful homicide, and in fact were not taken before a Magistrate until a warrant had been issued and the petitioner had been transported to the Walton County, Florida Jail, the warrant having been issued on July 23, 1965 some 10 days after the initial arrest.

The petitioner, Schneble, testified that he was promised leniency and although Detective Sgts. Haley and Herron denied this on direct examination, Haley made certain admissions on cross-examination which corroborated the defendant, Schneble's statement (T-247, 248) (T-390). Sgt. Haley further testified that the Chillingsworth murder case was a good example of what they were trying to convey to Schneble (T-346). The defendant, Schneble, was placed

in fear of his life and was the victim of a staged gangland type pursuit at high speeds along the back roads of Palm Beach County, was subjected to extreme physical exhaustion, mental fatigue, and constant terror for a period of 48 hours. (For a complete detailed description of this, note the cross-examination of Sgt. Haley commencing on T-325).

The petitioner was separately indicted by a grand jury for the Fall Term, 1965, Circuit Court of Walton County, Florida, and presented same in open Court on September 15, 1965, charging the petitioners with the crime of murder in the first degree. (R-1)

A motion to quash the indictment was made in open Court on September 20, 1965, on grounds of improper venue and further that the grand jury proceedings were not conducted according to law, the motion as directed to improper venue being denied at that time. (R-2). Hearing on the motion to quash as directed to the proceedings of the grand jury being unlawful was held on October 1, 1965, and denied by the Court at that time. A transcript of this hearing and a previous proceeding of September 14, 1965, whereby the Trial Judge and the District Attorney questioned several of the grand jurors is bound separately and made a part of the Record on Appeal herein.

At the hearing of October 1, 1965, the State made an oral motion to merge for trial the prosecution of the separately indicted alleged co-perpetrators of the same offense, (Page 21 of transcript of October 1, 1965 hearing), to which the petitioners objected. (Page 21 *supra*.)

On October 13, 1965, the Court entered an order granting said motion and consolidated the two prosecutions for trial (R-2).

The defendant was tried in the Circuit Court of Walton County, Florida on November 16th through November 19, 1965.

When the State rested its case the petitioners moved for a directed verdict of acquittal stating among other things as

their grounds the unlawful search and seizure of the alleged murder weapons from an automobile occupied by the petitioner, that the State had wholly failed to establish the corpus delicti of the murder prior to considiring the alleged admissions of Donald Felix Schneble, that the admission of the petitioner, Schneble, was obtained under obvious duress and mental fright, the State had completely failed to prove beyond a reasonable doubt without the admissions of petitioner, Schneble that the defendant, Snell, was a co-perpetrator of the crime of murder in the first degree, that the State failed to prove a premeditated design or a felony in connection with said murder in order to satisfy the requirements of a charge of first degree murder, that the State had failed to establish by a proponderance of evidence the venue necessary to have this case tried in Walton County, Florida, in that the indictment charging the petitioner specified Walton County, Florida, and was not lodged in the wording that said homicide took place during the trip and in a vehicle which passed through Walton County, Florida, and among other things, finally, that the State failed to produce competent relative evidence necessary to prove the essential elements of the crime of first degree murder against the petitioner. (T-531). Said motion was denied by the Court. (T-532). Petitioner herein offered no testimony in his behalf at the trial.

On November 19, 1965, the case was submitted to the jury after the argument of counsel and the charge of the Court. On that same day the jury returned a verdict of guilty against both defendants.

On November 30, 1965, the petitioner filed his motion for a new trial. (R-6 and 7). On December 3, 1965, in open Court the Court denied said motion, adjudged the defendant guilty as charged and sentenced him to the mandatory death penalty. (R-8).

On July 27, 1967, the Florida Supreme Court in a five to two decision affirmed the trial Court judgment. The petitioner then filed his motion for a re-hearing which was subsequently denied on September 19, 1967.

From this denial the petitioner filed a petition for writ of certiorari to the United States Supreme Court said writ having been granted on June 10, 1968. The Florida Supreme Court's decision was reversed and remanded for further proceedings in light of *Bruton v. U.S.*, 391 U.S. 123 (1968).

The Florida Supreme Court upon reconsideration reversed the decision as to the defendant, Snell, but again affirmed the trial Court as to the defendant, Schneble.

After denial of a motion for re-hearing by the Florida Supreme Court the petitioner again sought redress by petition for writ of certiorari in this Court on March 13, 1969.

ARGUMENT

This case is before the Court for further consideration as to whether the trial and conviction was in violation of the principal enumerated by this Court previously in the case of *George William Bruton v. United States*, 398 U.S. 123. In reviewing the opinion written in the *Bruton* case this writer could not help but be struck by the close parallel between the two cases. The backgrounds of the two cases were very similar in that in the *Bruton* case Bruton was tried in the lower Court with a co-defendant, Evans and they were both convicted largely on the statements made by the defendant, Evans. In a subsequent appeal to the Court of Appeals for the Eighth Circuit the Circuit Court of Appeals reversed the conviction as to Evans and affirmed the conviction as to Bruton. The reversal was based on the lack of voluntariness of the statement made the defendant, Evans.

When the Evans conviction was reversed and the statements of his were removed from the record there was nothing really left upon which the defendant, Bruton could have been convicted. The situation with regard to petitioner's case now under consideration by this Court is factually similar in that petitioner, Schneble, made statements against his own interest and he would more nearly fit into the position of Evans in this case.

However the defendant, Snell did make certain statements which were damaging both to himself and to the defendant, Schneble. His statements were made to the highway patrolman who made the initial arrest, said statements having been allowed into evidence by the trial judge and is sprinkled throughout the testimony of the highway patrolman, William J. Maddox in his testimony. (T-57 through 82). Additionally the FBI agent, Richard B. Kellogg, testifying before the jury, was allowed to state his conversation made with the defendant, Snell, which were recorded in the transcript. (T-395 through 400).

Agent Kellogg was followed to the witness stand by Lt. Larry Yates, the Palm Beach County Florida Sheriff's Department, whose testimony was primarily relating to the conversations with the defendant, Snell and Mr. Snell's statements to him. The pertinent statements made by the defendant, Snell, are found in the transcript. (T-407 through 409).

Although the statements of the defendant, Snell, were not as lengthy and as detailed as those of the petitioner herein, certainly they were damaging in that they were not subject to cross-examination and they were introduced primarily for the purpose of showing the inconsistencies that were made in the initial statements with statements that were later made. Certainly the two statements made by the co-defendants were introduced to corroborate each other, and had they not been introduced in effect against each other the defendant would have been cast in a much more favorable light before the jury becuase he would have gone to trial without a corroborating witness against him.

This further pointed out that without the corroborating statements of the co-defendant, Snell, the State of Florida would have been in a much worse position with regard to the proof of the corpus delicti, which the defendant, Schneble would have been entitled to the directed verdict because of the failure of the State to establish such a corpus delicti, had it not been for the corroborating statements of the defendant, Snell.

It is further argued that the gun taken from the automobile driven by the defendant, Snell, said gun having been the subject of a motion to suppress, was illegally obtained but the trial judge allowed the gun to go into evidence in the cause. This gun also constituted evidence against the defendant, Schneble, although it certainly had no connection whatsoever with the defendant, Schneble.

It is submitted that the holding of this Court in the case of *Chimel v. California*, 395 U.S. 752, the gun would not have been admissible even as to defendant, Snell, and certainly under the holding of this case in *Bruton* the evidence should not have been allowed as against the defendant, Schneble, the petitioner herein.

In the case of *Pointer v. Texas*, 380 U.S. 400, this Court stated, "That the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him." In the case of *Douglas v. Alabama* this Court said, "Although the Solicitor's reading of Loyd's alleged statement, and Loyd's refusals to answer, were not technically testimony, the Solicitor's reading may well have been the equivalent in the jury's mind of testimony that Loyd in fact made the statement; and Loyd's reliance upon the privilege created a situation in which the jury might improperly infer both that the statement had been made and that it was true." In each of these cases then this Court has taken the position that the right of confrontation of witnesses against the defendant's interest for the subject matter of cross-examination and the failure to be afforded this right is a denial of his Constitutional guarantees under the Sixth Amendment.

Certainly the State of Florida realized the value of trying these two defendants together and the effect of having the corroboration of one defendant's statement to be used against the other in that these two defendants were initially indicted separately by the Walton County, Florida grand jury but upon motion of the State Attorney for the merger of the two grand jury indictments for trial the motion was granted

and the defendants were jointly tried. This motion for a merger was vigorously contested by the defendants and the joint trial of the petitioner and a co-defendant was held despite and over the objection of the petitioner. The State obviously felt that without both defendants being on trial jointly that their case would be severely weakened against either of the defendants.

Rule 14 of the Federal Rules of Criminal Procedure authorizes a severance where it appears that a defendant might be prejudiced by a joint trial. Although the Federal Rules of Criminal Procedure is not controlling in the State's case, certainly they are worthy of consideration in determining whether a defendant's basic Constitutional rights have been violated in a State Court. Certainly common sense and reasoning would dictate that men and women in everyday affairs do not have the capacity to compartmentalize their brains so that they are able to consider evidence of one defendant only as against that defendant as evidence against another defendant only as to that defendant. This is asking men to do acts of mental gymnastics not possible by even the most intelligent people in the world. The conclusion reached in the *Bruton* decision was vigorously argued by the petitioner and his co-defendant in the appeal to the Florida Supreme Court prior to the holding of this Court in the *Bruton* case. This was done in spite of the fact that *Delli Paoli v. United States* was still the law at the time of the oral argument before the Florida Supreme Court. This argument was made to the Florida Supreme Court because the petitioner felt so strongly that the law with regard to typed testimony should be stricken from a joint trial.

The writer feels that the *Delli Paoli* decision was long past due for being overruled. It is felt however that this Court may not have arrived at the decision it did had it not been for the reversal in the lower Court of the co-defendant, Evans, on the basis of his inadmissible statements. It is felt that this Court would be remiss in its duty if it did not review the facts surrounding the circumstances of the state-

ments made by the petitioner in this cause which statements were used against him in the joint trial. Nowhere in the decisions that have been reviewed for the various appeals that have been taken in this cause was this writer able to find circumstances that were more flagrant violations of the defendant's right against self-incrimination than were present in the interrogation of the petitioner herein. Although the review of this case has been granted for examination in light of *Bruton* it is felt that the facts and law of the *Bruton* decision cannot be applied without taking a look at the overall circumstances leading up to the trial and conviction of this petitioner. Although the statements of the petitioner were introduced in the joint trial of he and his co-defendant by the petitions of the State's chief witnesses, Detectives Haley and Herron, the petitioner was continuously harrassed and interrogated for a period of 48 to 72 hours prior to making any damaging statements. The statement of the petitioner herein was tainted much worse than the statement of Evans in the *Bruton* case. The Court is therefore urged to examine the factual situations surrounding the statements made by the petitioner herein. Although this case presently under consideration was tried prior to the holdings of this Court in *Escobedo v. Illinois*, 378 U.S. 478, or *Miranda v. Arizona*, 384 U.S. 127 (1966), the rule applicable to the voluntariness of the petitioner's statement would fall far short of the requirements laid down in those two cases.

The Court is therefore urged to look at the totality of the circumstances with regard to the petitioner's trial and conviction. Petitioner urges the Court to consider the fact that although it is impossible to measure the damage that was done by allowing the statements of co-defendant, Snell, to evidence in their joint trial it was unquestionably a violation of his right of confrontation under the guaranties provided by the Sixth Amendment and therefore he should be granted a new trial so that the jury, which is the trier of the fact would be able to consider his case free from any unconstitutional evidence. Furthermore this Court should consider the nature of the statements of the petitioner as

the Court obviously did consider the statements of the co-defendant, Evans in the *Bruton* case in arriving at its decision in this cause.

CONCLUSION

For the reasons set forth herein the petitioner respectfully requests this Court will reverse the decision of the Florida Supreme Court and remand the cause to the Florida Supreme Court with instructions to set aside the conviction of the defendant and grant unto him a new trial.

Respectfully submitted,

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